



General Assembly

January Session, 2007

**Amendment**

LCO No. 7800

**\*SB0125807800SD0\***

Offered by:  
SEN. FINCH, 22<sup>nd</sup> Dist.

To: Subst. Senate Bill No. **1258**

File No. 564

Cal. No. 447

**"AN ACT CONCERNING UNDERGROUND STORAGE TANKS."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2007*) The owner or operator  
4 of an underground storage tank system storing petroleum that is  
5 subject to section 22a-449(d)-101 et seq. of the regulations of  
6 Connecticut state agencies, who owns or operates more than ten  
7 facilities with underground storage tank systems, may store records  
8 required to be maintained under section 22a-449(d)-103(e) of the  
9 regulations of Connecticut state agencies, in a central location in the  
10 state of Connecticut, provided such owner or operator: (1) Specifies, in  
11 writing, the location of any such centrally stored records and such  
12 other information as the Commissioner of Environmental Protection  
13 may prescribe related to such storage on a form prescribed by said  
14 commissioner and submits such form to said commissioner; and (2)  
15 ensures that such records are immediately available for inspection by  
16 the Commissioner of Environmental Protection, or the commissioner's  
17 designee, at any such central location. The following records may not

18 be stored solely at such a central location but shall be maintained at the  
19 site of the underground storage tank system: (1) A copy of all  
20 Underground Storage Tank Facility Notification Forms, or EPHM-6,  
21 submitted to the commissioner, regarding underground storage tanks  
22 for the site; (2) for all metallic underground storage tank systems,  
23 records concerning the most recent cathodic protection test; (3) for  
24 underground storage tank systems with impressed current cathodic  
25 protection, the last six months of records regarding the inspection of  
26 the cathodic protection systems, if applicable; (4) the most recent prior  
27 twelve months of records related to repairs of the underground storage  
28 tank system required by section 22a-449(d)-103(d)(6) of the regulations  
29 of Connecticut state agencies; (5) the most recent six months of records  
30 demonstrating compliance with the release detection requirements of  
31 section 22a-449(d)-104 of the regulations of Connecticut state agencies,  
32 including, but not limited to, inventory control and reconciliation of  
33 such inventory control records; (6) records regarding the two most  
34 recent underground storage tank tightness pursuant to section 22a-  
35 449(d)-104(e)(3) of the regulations of Connecticut state agencies; and  
36 (7) any other records regarding an underground storage tank system  
37 that the commissioner specifies, in writing, that a facility shall keep on-  
38 site. Nothing in this section shall affect any requirement of chapter  
39 446k of the general statutes other than the location of where certain  
40 records may be stored.

41 Sec. 2. Section 22a-449m of the general statutes is repealed and the  
42 following is substituted in lieu thereof (*Effective October 1, 2007*):

43 (a) Any remediation of contaminated soil or groundwater the cost of  
44 which is to be paid out of the subaccount established under subsection  
45 (b) of section 22a-449c shall be performed by or under the direct onsite  
46 supervision of a registered contractor, as defined in sections 22a-449l  
47 and 22a-449n and shall be performed in accordance with regulations  
48 adopted by the commissioner pursuant to section 22a-133k that  
49 establish direct exposure criteria for soil, pollutant mobility criteria for  
50 soil and groundwater protection criteria for GA and GAA areas. If the  
51 replacement of any such residential underground heating oil storage

52 tank system performed pursuant to the provisions of this section  
53 involves installation of an underground petroleum storage tank, such  
54 tank shall conform to any standards which apply to new underground  
55 petroleum storage tanks.

56 (b) The commissioner shall adopt regulations, in accordance with  
57 the provisions of chapter 54, setting forth the standards and criteria for  
58 residential underground heating oil storage tank systems which may  
59 include, but not be limited to, (1) standards for criteria for the design,  
60 installation, operation, maintenance and monitoring of such facilities,  
61 (2) the life expectancy after which such systems must be removed and  
62 replaced, and (3) standards and procedures for the granting of a  
63 waiver for the installation of a new residential underground heating  
64 oil storage tank system or the replacement of an existing system. The  
65 commissioner shall adopt regulations, in accordance with the  
66 provisions of chapter 54, regarding the removal of all pipes connected  
67 to both aboveground and underground residential heating oil storage  
68 tank systems, when a storage tank is removed, regardless of the  
69 storage tank's capacity.

70 Sec. 3. Subsection (f) of section 22a-449 of the general statutes is  
71 repealed and the following is substituted in lieu thereof (*Effective from*  
72 *passage*):

73 (f) The Commissioner of Environmental Protection may adopt  
74 regulations, in accordance with the provisions of chapter 54, to  
75 establish (1) requirements for the inspection of nonresidential  
76 underground storage tank systems for compliance with the  
77 requirements of this chapter, including, but not limited to, the  
78 minimum frequency, method and content of inspections, and  
79 maintenance and disclosure of results, (2) a program to authorize  
80 persons to (A) perform inspections, including, but not limited to,  
81 education and training requirements for such persons, and whether or  
82 not such persons may be employed by the owner or operator of the  
83 subject nonresidential underground storage tank system, and (B)  
84 determine whether the violations for which a nonresidential

85 underground storage tank system has been taken out of service  
86 pursuant to subsection (g) of this section have been corrected, which  
87 regulations may include, but not be limited to, a prohibition for an  
88 owner or operator of any such system from placing such system back  
89 into service pursuant to subsection (g) of this section after the  
90 regulations take effect or additional requirements for an owner or  
91 operator of any such system, and [(C)] (3) requirements, in addition to  
92 the requirements contained in subsection (g) of this section, relating to  
93 the prohibition of deliveries to and the use of nonresidential  
94 underground storage tank systems that are not in compliance with  
95 section 22a-449o or with the requirements of this section and any  
96 regulations adopted under this section.

97 Sec. 4. Subsection (a) of section 22a-449c of the general statutes is  
98 repealed and the following is substituted in lieu thereof (*Effective from*  
99 *passage*):

100 (a) (1) There is established an account to be known as the  
101 "underground storage tank petroleum clean-up account". The  
102 underground storage tank petroleum clean-up account shall be an  
103 account of the Environmental Quality Fund. Notwithstanding any  
104 provision of the general statutes to the contrary, any moneys collected  
105 shall be deposited in the Environmental Quality Fund and credited to  
106 the underground storage tank petroleum clean-up account. Any  
107 balance remaining in said account at the end of any fiscal year shall be  
108 carried forward in said account for the fiscal year next succeeding.

109 (2) The account shall be used by the Commissioner of  
110 Environmental Protection to provide money for reimbursement or  
111 payment pursuant to section 22a-449f, as amended by this act, to  
112 responsible parties or parties supplying goods or services, for costs,  
113 expenses and other obligations paid or incurred, as the case may be, as  
114 a result of releases, and suspected releases, costs of investigation and  
115 remediation of releases and suspected releases, and for claims by a  
116 person other than a responsible party for bodily injury, property  
117 damage and damage to natural resources that have been finally

118 adjudicated or settled with the prior written consent of the board. The  
119 commissioner may also make payment from the account to an assignee  
120 who is in the business of receiving assignments of amounts approved  
121 by the board, but not yet paid from the account, provided the party  
122 making any such assignment, using a form approved by the  
123 commissioner, directs the commissioner to pay such assignee, that no  
124 cost of any assignment shall be borne by the account and that the state  
125 and its agencies shall not bear any liability with respect to any such  
126 assignment.

127 (3) Notwithstanding the provisions of this section regarding  
128 reimbursements of parties pursuant to section 22a-449f, as amended by  
129 this act, and regulations adopted pursuant to section 22a-449e, and  
130 regardless of when an application for payment or reimbursement from  
131 the account may have been submitted to the board, payment or  
132 reimbursement shall be made in accordance with the following: (A)  
133 After June 1, 2004, no payment or reimbursement shall be made for  
134 any costs, expenses and other obligations paid or incurred for  
135 remediation, including any monitoring to determine the effectiveness  
136 of the remediation, of a release to levels more stringent than or beyond  
137 those specified in the remediation standards established pursuant to  
138 section 22a-133k, except to the extent the applicant demonstrates that it  
139 has been directed otherwise, in writing, by the commissioner; (B) after  
140 June 1, 2005, no payment or reimbursement from the account shall be  
141 made to any person for diminution in property value or interest,  
142 provided that reimbursement for interest accrued on attorneys' fees  
143 may be permitted if an application seeking interest accrued on  
144 attorneys' fees was submitted to the commissioner on or before March  
145 31, 2003, and such application has been tabled by the board for three or  
146 more years; and (C) after June 1, 2005, no payment or reimbursement  
147 from the account shall be made for attorneys' fees or other costs of  
148 legal representation paid or incurred as a result of a release or  
149 suspected release (i) in excess of five thousand dollars to any  
150 responsible party, (ii) in excess of ten thousand dollars to any person  
151 other than a responsible party, and (iii) by a responsible party

152 regarding the defense of claims brought by another person, except that  
153 applications for reimbursement filed on or before June 30, 2005, shall  
154 not be subject to the limitations for reimbursement imposed by clauses  
155 (i) and (ii) of this subparagraph. In addition, notwithstanding the  
156 provisions of this section regarding reimbursements of parties  
157 pursuant to section 22a-449f, as amended by this act, the responsible  
158 party shall bear all costs of the release that are less than ten thousand  
159 dollars and all persons shall bear all costs of the release that are more  
160 than one million dollars, except that for any such release which was  
161 reported to the department prior to December 31, 1987, and for which  
162 more than five hundred thousand dollars has been expended by the  
163 responsible party to remediate such release prior to June 19, 1991, the  
164 responsible party for the release shall bear all costs of such release  
165 which are less than ten thousand dollars or more than five million  
166 dollars, provided the portion of any reimbursement or payment in  
167 excess of three million dollars may, at the discretion of the  
168 commissioner, be made in annual payments for up to a five-year  
169 period. There shall be allocated to the department annually, for  
170 administrative costs, two million dollars.

171 Sec. 5. Subdivision (1) of subsection (b) of section 22a-449f of the  
172 general statutes is repealed and the following is substituted in lieu  
173 thereof (*Effective from passage and applicable to applications filed with the*  
174 *underground storage tank petroleum clean-up account on or after July 1,*  
175 *2005*):

176 (b) (1) In addition to all other applicable requirements, a person  
177 seeking payment or reimbursement from the account shall  
178 demonstrate that when the total costs, expenses or other obligations in  
179 response to a release or suspected release (A) are two hundred fifty  
180 thousand dollars or less, that all labor, equipment and materials  
181 provided after October 1, 2005, and all services and activities  
182 undertaken after October 1, 2005, [shall be] are approved, in writing,  
183 either by the commissioner or by a licensed environmental  
184 professional with a currently valid and effective license issued  
185 pursuant to section 22a-133v; and (B) exceed two hundred fifty

186 thousand dollars, that all labor, equipment and materials provided  
187 after October 1, 2005, and all services and activities undertaken after  
188 October 1, 2005, [shall be] are approved, in writing, by the  
189 commissioner, [or that] provided the commissioner [has authorized]  
190 may authorize, in writing, [an] a licensed environmental professional  
191 with a currently valid and effective license issued pursuant to section  
192 22a-133v to approve, in writing, such labor, equipment, materials,  
193 services and activities, in lieu of [a written approval by] the  
194 commissioner. The provisions of this subsection shall apply to all costs,  
195 expenses or other obligations for which a person is seeking payment or  
196 reimbursement from the account and the board shall not order and the  
197 commissioner shall not make payment or reimbursement from the  
198 account for any cost, expense or other obligation, unless the person  
199 seeking such payment or reimbursement [includes with an application  
200 or with a request for payment or reimbursement all written approvals]  
201 provides the written approval required by this subdivision. Any  
202 written approval provided by the commissioner pursuant to this  
203 subdivision shall not constitute an approval pursuant to any other  
204 provision of the general statutes or any regulation and shall be  
205 presented to the board prior to the board making a decision regarding  
206 the application that such approval concerns.

207 Sec. 6. Subsection (c) of section 22a-449f of the general statutes is  
208 repealed and the following is substituted in lieu thereof (*Effective from*  
209 *passage and applicable to applications filed with the underground storage tank*  
210 *petroleum clean-up account either prior to or subsequent to the effective date*  
211 *of this section, except that the provisions of subdivision (10) of this subsection*  
212 *shall be applicable only to applications filed on or after October 1, 2007*):

213 (c) The board shall order reimbursement or payment from the  
214 account for any cost paid or incurred, as the case may be, if, (1) such  
215 cost is or was incurred after July 5, 1989, (2) a responsible party was or  
216 would have been required to demonstrate financial responsibility  
217 under 40 CFR Part 280.90 et seq. as said regulation was published in  
218 the Federal Register of October 26, 1988, for the underground storage  
219 tank or underground storage tank system from which the release

emanated, whether or not such party is required to comply with said requirements on the date any such cost is incurred, provided if the state is the responsible party, the board may order payment from the account without regard to whether the state was or would have been required to demonstrate financial responsibility under said sections 40 CFR Part 280.90 et seq., (3) after the release, if any, the responsible party incurred a cost, expense or obligation for investigation, cleanup or for claims of a person other than a responsible party resulting from the release, provided any such claim shall be required to be finally adjudicated or settled with the prior written approval of the board before an application for reimbursement or payment is made, (4) the board determines that the cost, expense or other obligation is reasonable and that there are not grounds for recovery specified in subdivision (1) or (3) of subsection (g) of this section, (5) the responsible party notified [the commissioner of the release in accordance with regulations adopted pursuant to section 22a-449 or, where such regulations are not applicable, as soon as practicable, and notified] the board, as soon as practicable, of the release and of any other claim by a person other than a responsible party, resulting from the release, in accordance with the regulations adopted pursuant to section 22a-449e, (6) the responsible party, or, if a person other than a responsible party applies for payment or reimbursement from the account, then such person demonstrates the remediation, including any monitoring to determine the effectiveness of the remediation, for which payment or reimbursement is sought is not more stringent than that required by the remediation standards established pursuant to section 22a-133k, except to the extent the responsible party or such person demonstrates that it has been directed otherwise, in writing, by the commissioner, (7) the responsible party, or, if a person other than a responsible party applies for payment or reimbursement from the account, then such person demonstrates that it does not have insurance, or a contract or other agreement to provide payment or reimbursement for any cost, expense or other obligation incurred in response to a release or suspected release, or if there is any such insurance, contract or other agreement, that any insurance coverage



255 has been denied or is insufficient to cover the costs, expenses or other  
256 obligations, paid or incurred or that any contract or other agreement is  
257 not able to or is insufficient to cover the costs, expenses or other  
258 obligations, paid or incurred, for which payment or reimbursement is  
259 sought from the account, (8) the responsible party demonstrates and  
260 the board determines that one of the milestones noted in section 22a-  
261 449p has been completed, (9) the board determines what, if any,  
262 reductions to the amounts sought from the account should be made  
263 based upon the compliance evaluations performed pursuant to  
264 subsection (d) of this section, and (10) [if] at the time any application or  
265 request for payment or reimbursement, including any supplemental  
266 application or request, is submitted to the board, there is no  
267 underground storage tank system subject to the requirements of  
268 subdivision (2) of this subsection dispensing petroleum on the  
269 property where the release or suspected release emanated or occurred,  
270 [then the responsible party demonstrates] and the application is  
271 submitted by the person who owns or operates the underground  
272 storage tank system at the time of the release, then such person shall  
273 demonstrate, in addition to all other applicable requirements, that lack  
274 of compliance with provisions of the general statutes and regulations  
275 governing underground storage tank systems was not a proximate  
276 cause of the release or suspected release and that there are not grounds  
277 for recovery specified in subdivision (2) of subsection (g) of this  
278 section. For applications filed with the underground storage tank  
279 petroleum clean-up account prior to October 1, 2007, subdivision (10)  
280 of this subsection shall apply only if the application is filed by the  
281 person who owns or operates the underground storage tank system at  
282 the time of the release. In acting on an application or a request for  
283 payment or reimbursement, the board, using funds from the account,  
284 may contract with experts, including, but not limited to, attorneys and  
285 medical professionals, to better evaluate and defend against claims and  
286 negotiate claims by persons other than responsible parties. The costs of  
287 the board for experts shall not be charged to the amount allocated to  
288 the Department of Environmental Protection pursuant to section 22a-  
289 449c, as amended by this act. If a person other than a responsible party

290 applies to the board claiming to have suffered bodily injury, property  
291 damage or damage to natural resources, the board shall order  
292 reimbursement or payment from the account if such person  
293 demonstrates that subdivisions (1), (2), (6) and (7) of this subsection are  
294 satisfied, the board determines that as a result of a release or suspected  
295 release such person has suffered bodily injury, property damage or  
296 damage to natural resources, that the costs, expenses or other  
297 obligations incurred are reasonable and the person submitting such  
298 claim demonstrates that it has attempted to or has provided written  
299 notice of its claim to the responsible party as required in subsection (a)  
300 of this section and that the responsible party has not applied to the  
301 board for payment or reimbursement of this claim. On or before June  
302 30, 2005, if the board denied reimbursement or provided for only  
303 partial payment or reimbursement from the account regarding a  
304 release, pursuant to subdivision (4) of this section, such denial or  
305 partial payment or reimbursement shall remain in effect and shall  
306 apply to all subsequent applications or requests for payment or  
307 reimbursement regarding such release.

308 Sec. 7. Subsection (g) of section 22a-449f of the general statutes is  
309 repealed and the following is substituted in lieu thereof (*Effective from*  
310 *passage and applicable to applications filed with the underground storage tank*  
311 *petroleum clean-up account both prior to and subsequent to the effective date*  
312 *of this section*):

313 (g) The Attorney General, upon the request of the board or the  
314 commissioner, may institute an action in the superior court for the  
315 judicial district of Hartford to recover the amounts specified in this  
316 section from any person who owns or operates an underground  
317 storage tank system at the time a release emanates or occurs from such  
318 system or any person who owns the real property on which a release  
319 emanates or occurs, provided such person owned the real property at  
320 or any time after the release emanates or occurs until the time that a  
321 final remediation action report is submitted by a licensed  
322 environmental professional or approved by the commissioner  
323 pursuant to subdivision (7) of section 22a-449p, if: (1) Prior to the

324 occurrence of the release, the underground storage tank or  
325 underground storage tank system from which the release emanated  
326 was required by regulations adopted under section 22a-449, as  
327 amended by this act, to [submit a notification to the commissioner but  
328 no such notification was provided] be the subject of an Underground  
329 Storage Facility Notification Form, or EPHM-6 but the person who  
330 owns or operates or who owned or operated such tank or tank system  
331 knowingly and intentionally failed to submit such notification form to  
332 the commissioner; (2) the release results from a reckless, wilful,  
333 wanton or intentional act or omission of such person or a negligent act  
334 or omission of such person that constitutes noncompliance with the  
335 general statutes or regulations governing the installation, operation  
336 and maintenance of underground storage tanks; or (3) the release  
337 occurs from an underground storage tank or system which is not in  
338 compliance with a final order issued by the commissioner pursuant to  
339 this chapter or a final judgment issued by a court concerning  
340 noncompliance with a requirement of this chapter; or (4) payment has  
341 been made from the account, including payment to the commissioner  
342 pursuant to subsection (i) of this section, to a person other than a  
343 person against whom an action may be brought pursuant to this  
344 subsection. All costs to the state relating to actions to recover such  
345 payments, including, but not limited to, reasonable attorneys' fees,  
346 shall initially be paid from the underground storage tank petroleum  
347 clean-up account. In any recovery the board or the commissioner is  
348 entitled to recover from such person (A) all payments made from the  
349 account with respect to a release or suspected release, (B) all payments  
350 made by the commissioner pursuant to subsection (i) of this section  
351 with respect to a release or suspected release, (C) interest on such  
352 payments at a rate of ten per cent per year from the date such  
353 payments were made, and (D) all costs of the state relating to actions to  
354 recover such payments, including, but not limited to, reasonable  
355 attorneys' fees. All actions brought pursuant to this section shall have  
356 precedence in the order of trial, as provided in section 52-191. If the  
357 Attorney General has filed an action against a person seeking recovery  
358 of the amounts specified in this subsection or if the commissioner

359 sends a person a demand letter regarding costs incurred by the state  
 360 pursuant to section 22a-451, any such person against whom an action  
 361 has been brought or who receives a demand letter shall not submit an  
 362 application or request for payment or reimbursement to the board  
 363 seeking payment or reimbursement of any such amount sought by the  
 364 Attorney General or by the commissioner. If any such application or  
 365 request for payment or reimbursement is submitted, the board shall  
 366 not take any action regarding any such application or request."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	22a-449m
Sec. 3	<i>from passage</i>	22a-449(f)
Sec. 4	<i>from passage</i>	22a-449c(a)
Sec. 5	<i>from passage and applicable to applications filed with the underground storage tank petroleum clean-up account on or after July 1, 2005</i>	22a-449f(b)(1)
Sec. 6	<i>from passage and applicable to applications filed with the underground storage tank petroleum clean-up account either prior to or subsequent to the effective date of this section, except that the provisions of subdivision (10</i>	22a-449f(c)
Sec. 7	<i>from passage and applicable to applications filed with the underground storage tank petroleum clean-up account both prior to and subsequent to the effective date of this section</i>	22a-449f(g)